

STEVEN BENNETT et al.

v.

BEAVER RIDGE WIND, LLC, et al.

Submitted on Briefs April 30, 2009

Decided May 5, 2009

Panel: SAUFLEY, C.J., and CLIFFORD, ALEXANDER, LEVY, SILVER, and MEAD, JJ.

MEMORANDUM OF DECISION

Steven Bennett and two other landowners in the Town of Freedom appeal from a judgment of the Superior Court (Waldo County, *Hjelm, J.*) affirming the denial of their appeal by the Freedom Board of Appeals from a ruling of the Freedom Code Enforcement Officer (CEO) that a permit held by Beaver Ridge Wind, LLC (BRW), to build three large wind turbines remained valid. As an initial matter, we find no merit in BRW's contention that this Court lacks subject matter jurisdiction to hear the appeal at bar.

Contrary to the appellants' contention, reviewing the CEO's determination directly,¹ the record contains substantial evidence to support the CEO's conclusion that BRW's project had "substantially commenced" within six months of its building permit being issued, as required by the applicable ordinance. *See Mills v. Town of Eliot*, 2008 ME 134, ¶ 18, 955 A.2d 258, 264 (stating that CEO's decision regarding building permit reviewed for "abuse of discretion, errors of law, or findings not supported by the substantial evidence in the record"); *City of*

¹ *See Mills v. Town of Eliot*, 2008 ME 134, ¶¶ 13, 16, 955 A.2d 258, 263-64 (stating that when the Superior Court acts as an appellate court "we review directly the operative decision of the municipality" (quotation marks omitted); also stating that when a board of appeals reviews the decision of a code enforcement officer in an appellate capacity only, the CEO's decision is the operative decision for purposes of appellate review).

Ellsworth v. Doody, 629 A.2d 1221, 1223-24 (Me. 1993) (finding that an ordinance's requirement that "significant progress of construction" be made to maintain the validity of a building permit was satisfied by activities which were "necessarily a part of the overall building project").

Finally, the fact that a member of the board of appeals was also a member of an advocacy group supporting BRW's project, standing alone, did not deprive the appellants of their due process right to a fair hearing under the United States and Maine Constitutions, because the record shows no evidence of bias in that member's official conduct and demonstrates that the appellants received a full and fair opportunity to be heard. *See Lane Constr. Corp. v. Town of Washington*, 2008 ME 45, ¶¶ 29-30, 942 A.2d 1202, 1210-11.

The entry is:

Judgment affirmed.

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